IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, CRIMINAL JURISDICTION

MISCELLANEOUS APPLICATION NO. 4253 OF 2005
IN
CRIMINAL WRIT PETITION NO. 786 OF 2005

Bronwyn D. Aguiar. .. .. Applicant
(Orig. 1st Respdt)

Versus

1. Floyd D. Aguiar. .. Respondent
(Orig. Petitioner

2. State of Maharashtra. .. Respondent
(Orig. 2nd Respdt)

Shri. V. M. Bhardwaj, Advocate, for the Applicant-Orig. 1 st Respondent.

Shri. Subhash Jha with Shri. Gaurav Agarwal, i/b M/s Law Global, for Respondent No. 1.

Shri. S. R. Shinde, A. P. P., for Respondent No.2 - State.

CORAM : A. M. KHANWILKAR, J.
DATE : NOVEMBER 21, 2005

P. C.

. Heard learned Counsel for the parties and perused the pleadings and docucments.

2. In my opinion, it will be in the interest of justice to recall the order of admitting the writ petition as passed on 25.4.2005 as, admittedly, the same was passed without hearing the applicant, the contesting respondent in the said writ petition.

3. To get over this this position, the original petitioner contends that the respondent has been duly served by postal authorities. However, the document relied upon by the petitioner to support his submission, in my opinion, does not clearly state that the applicant was duly served before 25.4.2005. In so far as the stand taken on behalf of the petitioner that the clerk of Law Global attempted to serve the notice on the applicant on 22.4.2005 is concerned, eventhough there may be substance in the argument of the petitioner, the fact remains that the applicant under wrong advice did not accept that notice for which reason they did not appear before this Court on 25.4.2005. Instead of going into the controversy about the conduct of the parties, the appropriate course would be to give an opportunity to the applicant in the present proceedings to consider the matter for admission afresh. While doing so, the ad-interim order which was granted by this Court on 21.3.2005 shall continue to operate till the writ petition is heard for admission afresh. On this understanding, the present application is allowed. The writ petitilon shall be posted for admission afresh as per its turn on 19.12.2005. The ad-interim order passed in the writ petition to continue till then. The parties to exchange the pleadings in the meanwhile, if any.

(A. M. KHANWILKAR, J.)